

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED

DOCKET NO. 2008-0303

For Approval of the Advanced Metering
Infrastructure (AMI) Project and Request to
Commit Capital Funds, to Defer and Amortize
Software Development Costs, to Begin Installation
of Meters and Implement Time-of-Use Rates, for
Approval of Accounting and Ratemaking
Treatment, and Other Matters.

PUBLIC UTILITIES
COMMISSION

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**HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT
COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S
MEMORANDUM IN OPPOSITION TO LIFE OF THE LAND'S
MOTION TO INTERVENE**

DECLARATIONS OF COUNSEL, MARISA CHUN AND DEAN K. MATSUURA

AND

CERTIFICATE OF SERVICE

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HAWAIIAN ELECTRIC COMPANY, INC. ("HECO"), HAWAII ELECTRIC LIGHT
COMPANY, INC. ("HELCO"), and MAUI ELECTRIC COMPANY, LIMITED ("MECO")¹
respectfully submit this Memorandum in Opposition to Life of the Land's ("LOL") Motion to
Intervene, filed January 20, 2009² ("Motion").

¹ HECO, HELCO and MECO are collectively referred to as the "HECO Companies" or "Companies".

² Hawaii Administrative Rules ("HAR") § 6-61-21 provides: "Service of Process. . . (c) Documents shall be served personally or, unless otherwise provided by law, by first class mail. . . ." By order filed October 28, 2008 in Docket No. 2008-0025, the Commission directed "all parties before the commission to state clearly on certificates of service the method of service on each party listed in the certificate of service (i.e., whether by hand-delivery or by mail)." With respect to the manner in which the Motion was served, the Certificate of Service to the Motion, dated January 20, 2009 ("COS") states:

I hereby certify that I have this date served a copy by hand delivery of the foregoing Motion to Intervene by Life of the Land, in PUC Docket Number 2008-0303, upon the following parties. I have hand delivered the original and 8 copies to the PUC, and sent electronic copies to the emails below representing the parties listed further below.

* * * *

The HECO Companies recognize that pursuant to the agreement reached among the parties with respect to the Renewable Energy Infrastructure (“REI”) Program (“REI Program”) proposed in the REIP docket, Docket No. 2007-0416, the appropriate docket for evaluating the merits of a specific REI project (“REI Project”) (such as the Advanced Metering Infrastructure (“AMI”) Project) is the proceeding in which an application is filed with respect to that particular REI Project. However, a party to the agreement reached in the REIP docket seeking intervention as a full party in a specific REI Project docket is nonetheless required to meet the standards for intervention set forth in HAR § 6-61-55.

In the instant docket, LOL has filed a largely generic motion to intervene generally pertaining to broad-based social and environmental concerns (focusing on issues relating to biofuels), which does not meet the Commission’s standards for intervention. In particular, LOL has not demonstrated: (1) an interest reasonably pertinent to the AMI Project, or how such

Although LOL hand delivered four copies of the Motion (along with four copies of motions to intervene contemporaneously filed by LOL in three other dockets) to Marisa Chun of HECO’s Regulatory Affairs department during a technical workshop regarding feed-in tariffs on January 20, 2009 (See Declaration of Marisa Chun), LOL did not hand-deliver or mail the Motion to: (1) HECO’s counsel of record, Goodsill Anderson Quinn & Stifel (“Goodsill”), or (2) Dean K. Matsuura, HECO’s Regulatory Affairs Manager (who is identified on the COS as the person at HECO to whom the Motion was hand delivered), on the date specified in the COS. Instead, LOL e-mailed the Motion to Goodsill and Dean K. Matsuura on January 21, 2009. See Declaration of Counsel; Declaration of Dean K. Matsuura. However, service by e-mail is not an identified method of service under HAR § 6-61-21.

With respect to the timeliness of this memorandum in opposition to the Motion, HAR § 6-61-41(c) states: “An opposing party may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five days after being served the motion” HAR § 6-61-22 states: “. . . When the prescribed time is less than seven days, Saturdays, Sundays, and holidays within the designated period shall be excluded in the computation” Five days from January 20, 2009, excluding Saturdays, Sundays and holidays, is January 27, 2009. Therefore, this memorandum in opposition to the Motion is timely filed.

With respect to the timeliness of the Motion itself, LOL represents that the Motion is timely because: “The Public Utilities Commission (“Commission”) opened three dockets dealing with biofuels on December 31, 2008. Our Motion to Intervene was filed on January 14, 2009, which is within 20 days after the Application was filed.” The HECO Companies do not dispute the fact that LOL’s Motion was timely filed. However, as indicated by the Commission’s file stamp on the cover of LOL’s Motion, the Motion was actually filed on January 20, 2009. In addition, the reason LOL’s Motion is timely is not that the Commission “opened three dockets dealing with biofuels on December 31, 2008.” Rather, LOL’s Motion is timely as a result of the Commission’s Order Extending the Deadline for Intervention, filed January 14, 2009, which extended the deadline for filing a motion to intervene or participate without intervention in this proceeding until Tuesday, February 3, 2009.

Moreover, although LOL signed the COS, LOL did not sign the Motion itself, as required by HAR § 6-61-16(c).

interest might be affected by the pending order in this docket; (2) that LOL's intervention as a full party will not broaden the issues or delay the proceeding; or (3) that the Consumer Advocate will not adequately represent LOL's interests with respect to AMI. LOL should be required to provide more than a generic explanation as to why it should be permitted to intervene in specific REI Project dockets before being granted intervention in those dockets. Given that LOL has not met its burden of demonstrating why it should be granted intervention under HAR § 6-61-55, LOL's Motion should be denied.

LOL has not requested participant status. If LOL is allowed to participate in this docket, however, then LOL should be designated a participant, and not an intervenor party. In addition, LOL's participation should be limited to filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, LOL's participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and LOL should be required to comply with the Rules of Practice and Procedure Before the Public Utilities Commission (the "Commission's Rules of Practice and Procedure").

I. STANDARD FOR INTERVENTION

Motions to intervene are governed by the Commission's Rules of Practice and Procedure, which pertain to intervention as a party as well as participation without intervention. LOL has labeled its Motion as a "Motion to Intervene" filed pursuant to HAR § 6-61-55. Under HAR § 6-61-55(a), "A person may make an application to intervene and become a party by filing a timely written motion . . . stating the facts and reasons for the proposed intervention and the position and interest of the applicant."

The general rule with respect to intervention, as stated by the Hawaii Supreme Court, is

that intervention as a party to a proceeding before the Commission “is not a matter of right but is a matter resting within the sound discretion of the Commission.” In re Hawaiian Electric Co., 56 Haw. 260, 262, 535 P.2d 1102 (1975); see Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992) at 8; Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989) at 5-6.

The Commission exercises its discretion by determining whether or not a movant should be admitted as a party (or as a participant) in a proceeding. HAR § 6-61-55(d) specifically states: “Intervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented.” Re Hawaii Electric Light Co., Docket No. 7259, Order No. 12893 (December 2, 1993).

In addition, the Commission needs to “secure the just, speedy and inexpensive determination of every proceeding,” which is the purpose of the Commission’s Rules of Practice and Procedure as stated in HAR § 6-61-1. However, the “just, speedy and inexpensive determination” of a proceeding cannot be accomplished if the Commission admits every movant as a party.

Based on the standards set forth above, LOL has not justified its intervention as a full party in this docket, and thus the relief requested in its Motion should be denied.

II. LOL’S MOTION TO INTERVENE SHOULD BE DENIED.

The HECO Companies recognize that pursuant to the agreement reached among the parties with respect to the REI Program proposed in the REIP docket, the appropriate docket for evaluating the merits of a specific REI Project (such as the AMI Project) is the proceeding in which an application is filed with respect to that particular REI Project.³ However, a party to the

³ AMI has been identified in the Companies’ renewable portfolio standards (“RPS”) and REIP dockets (see Docket Nos. 2007-0008 and 2007-0416, respectively) as a REI Project under the REI Program. In

agreement reached in the REIP docket seeking intervention as a full party in a specific REI Project docket is nonetheless required to meet the standards for intervention set forth in HAR § 6-61-55, and thus should be required to provide more than a generic explanation in support of its intervention as a full party.

As justification for its intervention as a full party to this admittedly “complex” docket,⁴ LOL has filed a largely generic motion to intervene generally pertaining to broad-based social and environmental concerns (focusing on issues relating to biofuels). Indeed, there are only a few portions of LOL’s Motion – mostly within LOL’s description of AMI and the AMI Project set forth in the “Puka” and “Background” sections of the Motion⁵ – that refer to issues reasonably pertinent to the AMI Project.⁶ But for these few statements, LOL’s Motion could likely be mistaken for a motion to intervene in any of a number of the HECO Companies’ Commission dockets.

Although LOL is a party to the agreement reached in the REIP docket, LOL should be required to provide more than a generic explanation as to why it should be permitted to intervene

the REIP docket, the HECO Companies, Consumer Advocate, Hawaii Renewable Energy Alliance and LOL have agreed, among other things that: (1) it is appropriate that the Commission approve the HECO Companies’ proposed REI Program and related REIP Surcharge (see HECO Companies’ letter to the Commission, filed November 28, 2008 in Docket No. 2007-0416); and (2) that each proposed REI Project should be evaluated on a case-by-case basis (see HECO Companies’ Reply Position Statement, filed September 17, 2008 in Docket No. 2007-0416). As a result of the agreement reached in the REIP docket, the instant docket (i.e., Docket No. 2008-0303) is the appropriate proceeding for specifically evaluating the merits of the AMI Project.

⁴ See Motion at 8.

⁵ See Motion at 2-3.

⁶ In general, an AMI system collects and analyzes energy usage, on a pre-defined schedule or “on demand” basis and provides two-way communications between customers’ meters and the utility’s systems that create operational benefits for the utility while enabling other capabilities including demand response and smart grid technologies.

At its core, the AMI Project involves: (1) replacing approximately 95-96% of the HECO Companies’ customer meters with advanced, solid state meters (“AMI Meters”) and (2) connecting them to a centralized meter data management system (“MDMS”) at HECO (3) by means of a two-way, radio frequency network (“Network”) leased from a third party.

To that end, the HECO Companies’ AMI Application addresses a number of complicated issues concerning cost recovery (e.g., deferral and amortization of certain MDMS costs; accelerated recovery of the costs of new and existing meters; recovery of incremental costs through a surcharge mechanism; inclusion of vendor costs in revenue requirements; and recovery of lease expenses) and rate design (e.g., approval and implementation of various time-of-use rates), as well as issues relating to the various benefits created or enabled by AMI.

in these proceedings. As explained below, the generic nature of LOL's Motion makes it difficult to discern what LOL's alleged interests in this docket are or may be. To the extent LOL has alleged any readily ascertainable interests in its Motion, those interests essentially relate to issues not reasonably pertinent to this proceeding, or which can be adequately represented by the Consumer Advocate. As further discussed below, if addressed in this docket, a number of those issues could only serve to broaden the issues and delay the proceeding. Accordingly, LOL's Motion should be denied.

A. LOL HAS NOT DEMONSTRATED AN INTEREST REASONABLY PERTINENT TO THE AMI PROJECT, OR HOW SUCH AN INTEREST MIGHT BE AFFECTED BY THE PENDING ORDER.

HAR § 6-61-55(b)(2) requires that a motion to intervene make reference to "[t]he nature and extent of the applicant's property, financial, and other interest in the pending matter[.]" In turn, HAR § 6-61-55(b)(3) requires that the motion refer to "[t]he effect of the pending order as to the applicant's interest." The generic nature of LOL's Motion makes it difficult to discern what LOL's alleged interests in the AMI Project are or may be. With regard to HAR §§ 6-61-55(b)(2) and 6-61-55(b)(3), the Motion contains only two statements directly related to the AMI Project.

First, with respect to HAR § 6-61-55(b)(2), LOL provides a description of AMI's capabilities, while expressing an unsupported opinion as to the way AMI is viewed by utilities:

This docket deals with fundamentally altering the grid to allow far greater flexibility in load management, grid stability and renewable energy penetration. The use of time-of-rates offers the opportunity to decrease peak loads and to eliminate the need for peaking units. It is in the utility's interest not to allow for the displacement of existing and planned peaking units. greater levels of renewable energy onto the grid. [sic] testing palm oil at a utility generator. [sic]

Motion at 4. This simple description and conclusory opinion do not demonstrate that LOL has a financial, property or other interest in the AMI Project sufficient to support intervention as a full

party in this docket. For example, LOL has not explained how it might have an interest in the AMI Meters, Network or MDMS installed in connection with the AMI Project.

Second, with respect to HAR § 6-61-55(b)(3), LOL describes what is essentially true of all capital expenditure applications – that approval to commit funds should not be granted absent a showing that the expenditure is reasonable:

We need to determine where we want to go, and whether this approach will get us there, instead of saying lets spend \$100M before determining where we want to go. Given that we could have done this a decade ago, let us not rush it so fast that we get it wrong.

Motion at 6. Similar to LOL's assertion with respect to HAR § 6-61-55(b)(2), this assertion does not demonstrate that the AMI Project will have an effect on an interest of LOL (and as explained above, LOL has not demonstrated that it has any interest reasonably pertinent to the AMI Project). For example, LOL has not explained: (1) how the cost recovery and rate design issues addressed in this docket might impact LOL or any of its members in a manner sufficient to justify its intervention as a full party; or (2) as further discussed below, why the Consumer Advocate would not be able to adequately represent LOL's alleged interests with respect to those issues.

B. LOL'S INTERVENTION IS LIKELY TO BROADEN THE ISSUES OR DELAY THE PROCEEDINGS.

HAR § 6-61-55(b)(7) requires that motions to intervene make reference to "[t]he extent to which the applicant's participation will broaden the issues or delay the proceeding." With respect to this requirement, LOL claims that, "We have never gone beyond the issues in any docket", and thus concludes in the heading for Section 8 of the Motion that, "LOL's Participation Will Neither Unduly Broaden The Issues Nor Delay This Proceeding."⁷ Given the generic nature of the "interests" described in the Motion, LOL's contention is unconvincing.

⁷ Extra space in original.

Based on the Motion, LOL's alleged "interest" in this docket relates to a broad array of issues not reasonably pertinent to the AMI Project. This broad array of alleged interests appears to be part of LOL's "holistic view" of this proceeding, which according to LOL –

is not limited to what many believe is the realm of traditional environmentalism: the birds and the bees, land use and toxic pollution. Rather, Life of the Land's holistic approach includes: (a) Transparency/Sunshine; (b) Life Cycle Social Impacts; (c) Life Cycle Environmental Impacts; and (d) Life Cycle Financial Impacts[.]⁸

More specifically, LOL's "holistic approach" appears to be concerned with general social and environmental issues including but not limited to: (1) making public documents "downloadable from the web"; (2) "[t]he use of sweat shops, slave labor and union busting techniques"; (3) "the Public Trust Doctrine and the Precautionary Principle"; (4) "taxpayer impacts"; (5) "Global Greenhouse gas emissions"; (6) "Climate Change"; and (7) "Balance of Payments". See Motion at 4-6.

Aside from these general social and environmental concerns, LOL's alleged interest in this docket appears to be focused on biofuels. For example, the Motion points out that the Commission "opened three dockets dealing with biofuels on December 31, 2008." Motion at 3. In addition, as noted above, LOL claims that "[i]t is in the utility's interest not to allow . . . testing palm oil at a utility generator." Motion at 4. Moreover, with respect to LOL's alleged "Balance of Payments" concerns, LOL asserts that "[r]eplacing imported fuel with indigenous fuel has an enormous positive impact on local jobs and on economic prosperity."

LOL's concerns regarding biofuels and other general social and environmental interests are not reasonably pertinent to the AMI Project-related issues that will need to be addressed by the parties in this docket (e.g., the installation of and cost recovery mechanism for the AMI

⁸ Motion at 4-5.

Project, rate design issues related to time-of-use rates and AMI benefits). Accordingly, addressing LOL's concerns in this docket could only serve to unduly broaden the issues and delay the proceeding.

C. **LOL HAS NOT DEMONSTRATED THAT THE CONSUMER ADVOCATE WILL NOT ADEQUATELY REPRESENT ITS INTERESTS WITH RESPECT TO AMI.**

HAR § 6-61-55(b)(5) requires that motions to intervene make reference to "[t]he extent to which the applicant's interest will not be represented by existing parties[.]" Although the Commission's Order named the Consumer Advocate as an *ex officio* party to this docket,⁹ LOL claims that "[a] minimal divergence is sufficient for separate representation", and that "[a] quick review of Dockets 05-0145 and 2007-0346 reveal deep rifts between the LOL and Consumer Advocate positions." Motion at 6. These contentions are without merit.

First, LOL's argument that "[a] minimal divergence is sufficient for separate representation" is unsupported. Under LOL's interpretation of the rule, virtually any party could claim a right of intervention on the grounds of a "minimal divergence" of interests. This would not "secure the just, speedy and inexpensive determination of every proceeding," which is the purpose of the Commission's Rules of Practice and Procedure.

Second, although the positions taken by LOL and the Consumer Advocate in Docket Nos. 05-0145 and 2007-0346 may have been different, those dockets do not establish the existence of any "rifts" with respect to AMI or the issues in this docket, as LOL's interests in those dockets were focused on biofuels. For example, Docket No. 05-0145 concerned HECO's application seeking approval for the purchase and installation of a 110 MW combustion turbine

⁹ See Order at 1.

at HECO's Campbell Industrial Park Generating Station to be run on 100% biofuels.¹⁰ Docket No. 2007-0346 similarly involves HECO's application for approval of a biofuel contract with Imperium Services, LLC, and to include the contract costs in HECO's Energy Cost Adjustment Clause.

As noted above, LOL's concerns regarding biofuels are not reasonably pertinent to the issues in this docket. As a result, the positions taken by LOL and the Consumer Advocate with respect to biofuels do not demonstrate the existence of a "rift" between their positions with regard to AMI.

LOL nevertheless contends that:

In this case, the Consumer Advocate has agreed to a unified position with the utility. There is nothing in the existing record that indicates that any of the issues that are of concern to Life of the Land - including those related to the environment, climate, justice, equity, and life cycle impacts - have been analyzed or will be represented by any other party.

Motion at 10.

This contention is also without merit. The so-called "unified position" mentioned by LOL appears to be a reference to Section 14 of the HCEI Agreement,¹¹ which generally requires the HECO Companies to apply for Commission approval of an AMI project and to implement AMI as quickly as possible upon receipt of such approval.¹² However, Section 14 does not bind

¹⁰ See Docket No. 05-0145, Decision and Order No. 23457, filed May 23, 2007.

¹¹ The October 20, 2008 *Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and Hawaiian Electric Companies* is referred to as the "HCEI Agreement".

¹² Section 14 of the HCEI Agreement provides:

Advanced Metering Infrastructure is a critical component of a number of important aspects of the Clean Energy Initiative. The parties believe that AMI will help customers manage their energy use more effectively. To that end, the parties agree on the following:

1. Hawaiian Electric will apply to the Commission by November 30, 2008, for immediate approval to begin installing, on a first-come, first-served basis, advanced meters for all customers that request them. The application will also seek expedited approval to fully implement time-of-use rates on an interim basis for the customers requesting the installation of advanced meters. Unless the Commission identifies a compelling reason to do otherwise, all customers having advanced meters will be given

the Consumer Advocate to a “unified position” with the HECO Companies regarding AMI. Instead, Section 14 generally acknowledges: (1) the “parties’ belie[f] that AMI will help customers to manage their energy use more effectively”; and (2) the parties’ agreement to the timeline for and general substance of the HECO Companies’ application, implementation, evaluation and reporting with respect to an AMI project. See HCEI Agreement at 24-25.

The foregoing provisions of the HCEI Agreement do not, however, amount to a “unified position” with respect to the reasonableness of the proposed AMI Project. Nor do they obligate the Consumer Advocate to blindly support any AMI project proposed by the HECO Companies. To the contrary, in evaluating the AMI Project, the Consumer Advocate will be free to form its own conclusions and independently evaluate the reasonableness of the proposed project.

In addition, even if the HECO Companies and Consumer Advocate had reached a “unified position” with respect to AMI (which they have not), the Consumer Advocate would

the utility time-of-use or dynamic rate options and shall have to affirmatively opt out of the rate option.

2. The meters and associated costs will be paid for through the CEIS, until such costs are embedded and recovered in the utilities’ base rates in future rate cases.

3. By December 31, 2008, Hawaiian Electric will file a full application to install advanced meters to remaining customers and the communication and meter data management system, including the necessary software and appropriate pricing programs. The PUC application will identify the desired goals, business purposes, functionality and cost for advanced meters and the identification of a meter data management system with associated costs to purchase and install that will achieve the desired goals and purposes, including a schedule for acquisition and installation of remaining meters and the customers to be served.

4. Upon Commission approval, AMI will be implemented as quickly as possible, along with proposals for time-of-use rates and customer electricity pricing information that facilitate substantive customer understanding and energy use management.

5. Hawaiian Electric will minimize the financial impacts on low income and disadvantaged customers who have limited options through a combination of tiered rates and lifeline rates.

6. The Hawaiian Electric utilities working with external experts will submit to the Commission an evaluation of the effectiveness of the utilities’ time-of-use rates and shall determine whether any changes are needed to the energy information communications and time-of-use rates to improve customers’ energy responsiveness. The utilities will complete this evaluation by December 31, 2009 and will submit a second report 1 year after the full deployment of AMI.

7. Beginning January 1, 2009, the utility will submit an annual report to the Commission on the number of customers currently served, number who opted out, customer load response, impact of time-of-use rates on customer’s monthly bills and feedback received from customers.

remain “statutorily required to represent, protect, and advance the interest of all consumers.”

HRS § 269-51 (emphasis added). Thus, regardless of LOL’s contentions, the Consumer Advocate is required to represent the interests of all consumers (including LOL’s members) in its position on the Companies’ application. Given the Consumer Advocate’s resources, including the expertise, knowledge and experience it has gained as a statutorily-named party to countless utility project application proceedings, this is a task to which the Consumer Advocate is well-suited.

III. LIMITED PARTICIPATION WITHOUT INTERVENTION.

If the Commission finds that LOL should be allowed to participate in this docket, then it may be appropriate to allow LOL limited participation without intervention. The Commission in the past has denied intervenor status, but granted participation status pursuant to HAR § 6-61-56, and allowed the limited participation of persons seeking intervention on specific issues when such persons’ interests may not be adequately represented by existing parties, or when such persons may have special knowledge or expertise.

HAR § 6-61-56(a) provides:

The commission may permit participation without intervention. A person or entity in whose behalf an appearance is entered in this manner is not a party to the proceeding and may participate in the proceeding only to the degree ordered by the commission. The extent to which a participant may be involved in the proceeding shall be determined in the order granting participation or in the prehearing order.

For example, the Commission addressed participation without intervention in Re Hawaii Electric Light Co., Docket No. 05-0315, Order No. 22663 (August 1, 2006) (“Order No. 22663”). In that rate case, the Rocky Mountain Institute (“RMI”) filed a motion to intervene, which was denied because RMI’s stated experience and expertise were not reasonably pertinent to HELCO’s request for a general rate increase. The Commission nevertheless granted RMI

“limited participant status, pursuant to H.A.R. § 6-61-56, restricted to the issues set forth in its Motion to Intervene, i.e., tiered rate pricing, time of use pricing, energy cost adjustment charge, net energy metering and the renewable energy and energy efficiency program for affordable homes.” Order No. 22663 at 8 (emphasis added). In addition, the Commission stated that “unless the commission decides otherwise at a future date, RMI’s participation is limited to responding to any discovery requests, filing a statement of position, and responding to questions at any evidentiary hearing.” Id. at 8-9.

The Commission added:

RMI is cautioned that it must follow all applicable rules of the commission, and that the commission will reconsider RMI's participation in this docket if, at any time, the commission determines that it is unreasonably broadening the pertinent issues raised in this docket or is unduly delaying the proceeding.

Id. at 9.

In addition, in Re Hawaii Electric Light Co., Docket No. 99-0207, Order No. 17532 (February 10, 2000) (“Order No. 17532”), the Commission denied the attempt of Citizen Utilities Company d/b/a The Gas Company (“TGC”) to intervene in HELCO’s rate case. However, the Commission granted TGC participant status, limited to HELCO’s proposed Standby Rider A.

The Commission stated:

the commission believes that TGC’s limited input as to the effects of Rider A on self-generators that use gas as a fuel source may prove useful. Therefore, consistent with HAR § 6-61-56(a), the commission will grant TGC participant status, limited to this narrow issue;¹³ provided that TGC’s participation does not in any manner duplicate the efforts of the Consumer Advocate in this regard. If, at any time during the commission’s review, it is concluded that TGC’s efforts

¹³ In a footnote, the Commission added:

Unless ordered otherwise, TGC’s participation will extend no further. We also make clear that as part of its on-going review of HELCO’s request for a general rate increase, the commission, on its own motion or otherwise, may later decide to separate Rider A from this rate proceeding. If so, TGC’s participation in this rate proceeding will terminate. Finally, we note that in two dockets currently pending before the commission, Hawaiian Electric Company, Inc., seeks to implement a standby charge on an interim (Docket No. 99-0105) and permanent basis (Docket No. 96-0356).

duplicate those of the Consumer Advocate's, the commission will reconsider TGC's further participation in this docket.

Order No. 17532 at 5-6 (footnote 6 omitted). The Commission issued similar orders in Re Hawaii Electric Light Co., Docket No. 6432, Order No. 10399 (November 24, 1989);¹⁴ and Re Maui Electric Co., Docket No. 7000, Decision and Order No. 11668 (June 5, 1992).¹⁵

LOL has not requested participant status. If LOL is allowed to participate in this docket, however, then LOL should be designated a participant, and not an intervenor party. In addition, LOL's participation should be limited to filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, LOL's participation should not be permitted in any settlement agreement between the parties¹⁶ or to affect the schedule of proceedings or the statement of the issues, and LOL should be required to comply with the Commission's Rules of Practice and

¹⁴ In Order No. 10399, the Commission denied the amended application to intervene of Puna Community Council, Inc. ("PCC") in a HELCO rate case, but granted PCC participation status, subject to the conditions that (1) PCC's participant status would be "limited to the issue of the specific impact of HELCO's proposed rate structure on the ratepayers of the Puna district who are in the lower income brackets", and (2) "PCC shall participate in the proceedings and present relevant documents and materials and testimony of witnesses through the Consumer Advocate." Order No. 10399 at 5-6. PCC had sought to intervene on the basis that HELCO's proposal to increase its rates would seriously impact the ratepayers of the Puna district. PCC's only attempt to distinguish itself from the general public was the allegation that HELCO's proposed rate increase would seriously impact Puna ratepayers because most of them were in the lower income brackets and tend to use less power. PCC also argued that the Consumer Advocate would not adequately represent the interests of the Puna district ratepayers.

¹⁵ In Decision and Order No. 11668, the Commission denied intervention, but allowed limited participation to seven low-income residents through its attorneys, the Legal Aid Society of Hawaii (collectively "Legal Aid"), in a MECO rate case. The low-income residents, through Legal Aid, sought to intervene on the alleged basis that they would not be adequately represented by the Consumer Advocate. Decision and Order No. 11668 at 3. In addition, Legal Aid informed the Commission that it could further the development of the record as it had access to certain experts and resources not available to any other party. The Consumer Advocate supported Legal Aid's involvement in the proceeding. The Commission denied Legal Aid's Motion to Intervene, and found that the Consumer Advocate would protect Legal Aid's interest. However, the Commission was impressed by Legal Aid's statement of expertise, knowledge and experience, and thus granted Legal Aid participant status limited to the issue of the specific impact of MECO's proposed rate structure and rate design on ratepayers in the lower income brackets.

¹⁶ See, e.g., the Stipulated Regulatory Schedule attached as Exhibit A to Order No. 22884, issued September 21, 2006 in Docket No. 2006-0084, page 2, wherein the Commission limited a participant's participation by the condition that the participant's assent to any settlement agreement between all or any of the parties was not required:

To the extent settlement discussions occur collectively amongst the Parties, the Participant shall receive notice and have the opportunity to participate in such settlement discussions, provided that the assent of the Participant shall not be required to any settlement reached by all or any of the Parties.

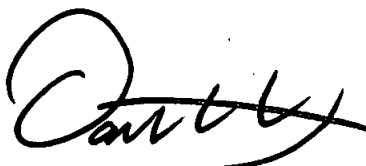
Procedure.

IV. CONCLUSION

Based on the foregoing, the HECO Companies respectfully request that LOL's Motion to Intervene be denied.

LOL has not requested participant status. If LOL is allowed to participate in this docket, however, then LOL should be designated a participant, and not an intervenor party. In addition, LOL's participation should be limited to filing a statement of position, responding to any discovery requests, and responding to questions at an evidentiary hearing (if an evidentiary hearing is held). Moreover, LOL's participation should not be permitted in any settlement agreement between the parties or to affect the schedule of proceedings or the statement of the issues, and LOL should be required to comply with the Commission's Rules of Practice and Procedure.

DATED: Honolulu, Hawaii, January 27, 2009.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.,
HAWAII ELECTRIC LIGHT COMPANY, INC., and
MAUI ELECTRIC COMPANY, LIMITED

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
MAUI ELECTRIC COMPANY, LIMITED

DOCKET NO. 2008-0303

For Approval of the Advanced Metering
Infrastructure (AMI) Project and Request to
Commit Capital Funds, to Defer and Amortize
Software Development Costs, to Begin Installation
of Meters and Implement Time-of-Use Rates, for
Approval of Accounting and Ratemaking
Treatment, and Other Matters.

DECLARATION OF COUNSEL

1. I, Damon L. Schmidt, am counsel of record herein for Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited. I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. I am an attorney with the law firm of Goodsill Anderson Quinn & Stifel, a Limited Liability Law Partnership LLP ("Goodsill"), whose offices are located at Ali'i Place, Suite 1800, 1099 Alakea Street, Honolulu, Hawaii, 96813.

3. Goodsill did not receive Life of the Land's ("LOL") Motion to Intervene, filed by LOL on January 20, 2009 in this docket ("Motion") by hand-delivery or U.S. mail.

4. Goodsill received the Motion from LOL via e-mail on January 21, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, January 27, 2009.



DAMON L. SCHMIDT

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
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Treatment, and Other Matters.

DECLARATION OF MARISA CHUN

1. I, Marisa Chun am Senior Regulatory Analyst for Hawaiian Electric Company, Inc. ("HECO"). I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. My business address is P.O. Box 2750, Honolulu, Hawaii, 96840-0001.

3. Four copies of Life of the Land's ("LOL") Motion to Intervene, filed by LOL on January 20, 2009 in this docket ("Motion"), were hand-delivered to me by Henry Q Curtis along with four copies of three other motions to intervene filed by LOL in Docket Nos. 2008-0329, 2008-0330 and 2008-0331, while I was attending a technical workshop regarding feed-in tariffs on January 20, 2009.

4. When I returned to my office after the feed-in tariffs workshop, I gave a copy of each of the motions hand-delivered to me by Henry Q Curtis to Deborah Ichishita, of HECO's Regulatory Affairs department.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, January 27, 2009.


MARISA CHUN

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of

HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC.
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Approval of Accounting and Ratemaking
Treatment, and Other Matters.

DECLARATION OF DEAN K. MATSUURA

1. I, Dean K. Matsuura, am Manager, Regulatory Affairs for Hawaiian Electric Company, Inc. ("HECO"). I make this declaration based upon my own personal knowledge and upon information and belief gained in that capacity.

2. My business address is P.O. Box 2750, Honolulu, Hawaii, 96840-0001.

3. I did not receive Life of the Land's ("LOL") Motion to Intervene, filed January 20, 2009 in this docket ("Motion") via hand-delivery from LOL or by U.S. Mail.

4. I first learned of the Motion when Deborah Ichishita of HECO's Regulatory Affairs department e-mailed a copy of it to me on January 20, 2009.

5. I subsequently received a second electronic copy of the Motion from LOL via e-mail on January 21, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, January 27, 2009.

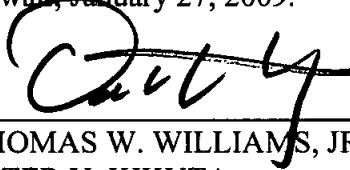

DEAN K. MATSUURA

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED'S MEMORANDUM IN OPPOSITION TO LIFE OF THE LAND'S MOTION FOR INTERVENTION, and DECLARATIONS OF COUNSEL, MARISA CHUN and DEAN K. MATSUURA, together with this CERTIFICATE OF SERVICE, as indicated below by hand delivery and/or by mailing a copy by United States mail, postage prepaid, to the following:

| Hand Delivery | U.S. Mail | |
|------------------|--------------|---|
| 2 copies | | Catherine Awakuni, Executive Director Department of Commerce and Consumer Affairs Division of Consumer Advocacy 335 Merchant Street, Room 326 Honolulu, Hawaii 96813 |
| | 1 copy | Henry Q Curtis Vice President For Consumer Issues Kat Brady Vice President for Social Justice Life Of The Land 76 North King Street, Suite 203 Honolulu, HI 96817 |

DATED: Honolulu, Hawaii, January 27, 2009.



THOMAS W. WILLIAMS, JR.
PETER Y. KIKUTA
DAMON L. SCHMIDT

Attorneys for
HAWAIIAN ELECTRIC COMPANY, INC.
HAWAII ELECTRIC LIGHT COMPANY, INC., and
MAUI ELECTRIC COMPANY, LIMITED